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9 DAVID URQUHART and Counter-Claimant
WESTHAMPTON, LTD.

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 ABIGAIL INVESTMENTS LLC, a Nevada limited
13 liability company,

14 Plaintiff,

15 v.

16 DAVID URQUHART, an individual,

17 Defendant.

18 DAVID URQUHART, an individual; and
19 WESTHAMPTON, LTD., a Canadian entity,

20 Counter-claimants,

21 v.

22 ABIGAIL INVESTMENTS, LLC, a Nevada limited
liability company; MAINLAND RESOURCES, INC., a
23 Nevada corporation; ROBERT FEDUN, an individual;
24 SIMEON KING HORTON, an individual; MICHAEL
NEWPORT, an individual; BRENT PIERCE, an
individual; GINO CICCI, an individual; VAUGHN
25 BARBON, an individual; EMPIRE STOCK

Case No. 09-CV-1174-(JCM) (GF)

**ORDER GRANTING IN PART
AND DENYING IN PART THE
MOTIONS TO DISMISS BY
THE COUNTER-DEFENDANTS**

TRANSFER, INC., a Nevada corporation; WILLIAM THOMAS, an individual; MORGAN CREEK ENERGY CORPORATION, a Nevada corporation; PIERCO PETROLEUM, INC., an Oklahoma corporation; PIERCO ENERGY CORPORATION, an Oklahoma corporation; BYRON COULTHARD, an individual; ERNEST SOROCHAN, an individual; ANGELO VIARD, an individual; MARCUS JOHNSON, an individual; THOMAS MARKHAM, II, an individual; D. BRUCE HORTON, an individual; BLAKE BOX, an individual; STEPHEN JEWETT, an individual; ERIK ESSIGER, an individual; PETER WILSON, an individual; and DOES I-X, inclusive;

Counter-defendants.

ORDER GRANTING IN PART AND DENYING IN PART THE MOTIONS TO DISMISS BY THE COUNTER-DEFENDANTS

On April 15, 2010, this Court heard oral argument on (1) the Motion to Dismiss Counter-Complaint filed by Brent Pierce ("Mr. Pierce"), Gino Cicci ("Mr. Cicci"), Vaughn Barbon ("Mr. Barbon"), Pierco Petroleum, Inc. ("Pierco Petroleum"), and Pierco Energy Corporation ("Pierco Energy") (Docket No. 89); (2) the Motion to Dismiss Counter-Complaint and Joinder filed by Robert Fedun ("Mr. Fedun"), Simeon King Horton ("Ms. King Horton") and Michael Newport ("Mr. Newport") (Docket No. 90); (3) the Motion to Dismiss Counter-Complaint and Joinder filed by Mainland Resources, Inc ("Mainland"), Ernest SoroChan ("Mr. SoroChan"), William Thomas ("Mr. Thomas") and Angelo Viard ("Mr. Viard") (Docket No. 91); (4) the Motion to Dismiss Counter-Complaint filed by Morgan Creek Energy Corporation ("Morgan Creek"), D. Bruce Horton ("Mr. Horton"), Marcus Johnson ("Mr. Johnson"), Peter Wilson ("Mr. Wilson"), Mr. Viard, Mr. Thomas, and Stephen Jewett ("Mr. Jewett") (Docket No. 92) and Joinder thereto (Docket No. 94); (5) Motion to Dismiss Counter-Complaint filed by Byron Coulthard ("Mr. Coulthard") and/or in the alternative, Motion for More Definite Statement and Abigail Investments, LLC ("Abigail") and Mr. Coulthard's Joinder to Motions to Dismiss and Motion to

1 Strike References to the Contents of Settlement Communications (Docket No. 93); and (6)
2 Empire Stock Transfer, Inc.'s ("Empire Stock") Joinder to the Motions to Dismiss (Docket No.
3 95). Dennis Kennedy, of Bailey Kennedy, appeared on behalf of David Urquhart ("Mr.
4 Urquhart") and Westhampton Limited ("Westhampton"). Stephen J. Peek, of Holland & Hart
5 LLP, and Christopher Wells, of Lane Powell PC, appeared on behalf of Mr. Pierce, Mr. Cicci,
6 Mr. Barbon, Pierco Petroleum, and Pierco Energy. Aaron Ford, of Snell & Wilmer LLP,
7 appeared on behalf of Abigail and Mr. Coulthard. Steve Morris, of Morris Peterson, appeared
8 on behalf of Mainland, Mr. Sorochan, Mr. Thomas and Mr. Viard. Harold Gewerter appeared on
9 behalf of Empire Stock. Craig Newby, of McDonald Carano Wilson, appeared on behalf of
10 Morgan Creek, Mr. Horton, Mr. Johnson, Mr. Wilson, Mr. Viard, Mr. Thomas and Mr. Jewett.
11 Cynthia Milanowski, of Hutchison & Steffen LLC, appeared on behalf of Mr. Fedun, Ms. King
12 Horton, and Mr. Newport.

13 Having considered the Motions and oral argument, and good cause appearing,

14 IT IS HEREBY ORDERED that:

15 1. The Counter-defendants' Motions to Dismiss Pursuant to Federal Rule of Civil
16 Procedure 12(b)(2) is granted, and all counter-claims alleged against Pierco Energy, Pierco
17 Petroleum, Mr. Coulthard, Ms. King Horton, Mr. Newport, Mr. Cicci, Mr. Barbon, Mr. Pierce,
18 Mr. Horton, Mr. Thomas, Mr. Sorochan, Mr. Viard, Mr. Jewett, Mr. Johnson, and Mr. Wilson
19 are dismissed, without prejudice, for failure to allege facts sufficient to establish either general
20 or specific jurisdiction.

21 2. The Counter-defendants' Motion to Dismiss Pursuant to Federal Rule of Civil
22 Procedure 9(b) is granted, and the Twenty-Fifth, Thirtieth, and Thirty-First counter-claims are
23 dismissed, without prejudice, for failure to plead claims for fraud, conspiracy, or aiding and
24 abetting with sufficient particularity.

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1 3. The Counter-defendants' Motion to Dismiss Pursuant to Federal Rule of Civil
2 Procedure 12(b)(6) is granted, in part, and denied, in part. The Thirty-Fifth and Thirty-Eighth
3 counter-claims are dismissed, without prejudice, for failure to allege sufficient facts relating to
4 alter ego to state counter-claims for declaratory judgment and corporate veil. The Counter-
5 defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) is denied as to all other
6 counter-claims.

7 4. The Counter-defendants' Motion to Strike Settlement Communications is denied,
8 without prejudice, and can be re-filed by separate motion.

9 5. All other relief requested in the Counter-defendants' Motions to Dismiss is
10 denied, without prejudice.

11 6. The parties stipulate to dismiss, with prejudice, all counter-claims against
12 Morgan Creek relating to the exercise of stock options, and only to the extent that the counter-
13 claim relates to the exercise of Morgan Creek's stock options. These claims include, and are
14 limited to, the Sixth, Thirteenth, Twenty-Third, Twenty-Sixth, Twenty-Seventh, Twenty-Eighth,
15 Twenty-Ninth, Thirty-Second, Thirty-Third, Thirty-Fourth, Thirty-Fifth, and Thirty-Ninth
16 counter-claims.

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